IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 136 OF 2006.

M/s Shrikripa Services ... Applicant.
V/s.
Pimpri Chinchwad Municipal Corp. ... Respondents.

Shri Anil Subramanian for the applicant.

CORAM : A.M. KHANWILKAR, J.

DATED : 14.8.2006.

P.C. :

. Heard Counsel for the applicant.

2. By order which is impugned in the present revision, the application filed by the plaintiff in Suit No. 3/2006 for temporary injunction under Order 39 came to be dismissed. That application was rejected against which order the matter was carried in appeal before the District Court being Misc. Civil Application No. 55 of 2006. Even that appeal has been dismissed. Against the said decision of the Appellate Court the appellant filed Writ Petition No. 4664 of 2006 in this Court. This Court, on 20th July 2006, passed the following order:

> ." In view of the reasons set out by the order passed in Writ Petition No. 3334 of 2006, the petitioner has an alternate remedy of challenging the impugned order by filing a civil revision application under Section 115 of CPC. Hence the petition is disposed as withdrawn with liberty to file

civil revision application and it is clarified that if the issue of limitation arises while entertaining such a revision application, the period of pendency of this petition shall be excluded."

3. In my opinion, however, remedy under section 115 of C.P.C. is not available in respect of the order which is impugned in this revision application. Counsel for the applicant however, would rely on observations made by the learned Single Judge of this Court which has allowed the petitioner to withdraw the writ petition filed by them under Article 227 of the Constitution of India. It is observed in the said order that for the reasons set out in the order passed in Writ Petition No. 3334/2006 the petitioners have alternative remedy of challenging the impugned order by filing revision application under section 115 of the CPC. Suffice it to observe that having regard to the mandate of amended section 115 of CPC, the said remedy is not available. In the order dated 20th July 2006 reference is made to Writ Petition No. 3334/2006. However, in that case the award in question was passed by the Co-operative Court and was not an interlocutory order as such. This does not mean that I am in agreement with the view taken in Writ Petition No. 3334 of 2006.

4. Counsel for the applicant would then rely on the decision of the Apex Court in the case of **Sadhana Lodh vs. National Insurance Co.Ltd,**

reported in 2003 DGLS 86= AIR 2003 SC 524. Even that decision of the Apex Court is of no avail. As even in that case the order in question was in respect of an Award passed by the Motor Accident Claims Tribunal and not an interlocutory order as such.

5. Suffice it to observe that as the applicant has withdrawn writ petition filed before this Court, it will be open to the applicant to take recourse to such remedy as may be permissible in law. It is certain that present revision application is not maintainable. Hence rejected.

(A.M. KHANWILKAR,J.)